

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

STANLEY L. PARKER)	
Claimant)	
VS.)	
)	Docket No. 218,178
STATE OF KANSAS)	
Respondent)	
AND)	
)	
STATE SELF INSURANCE FUND)	
Insurance Carrier)	

ORDER

Frances Parker, the Administratrix of the Estate of Stanley L. Parker, appealed the August 28, 1998 Award entered by Administrative Law Judge Bruce E. Moore. The Appeals Board heard oral argument on March 16, 1999.

APPEARANCES

Joseph W. Jeter of Hays, Kansas, appeared for the Administratrix. Richard A. Boeckman of Great Bend, Kansas, appeared for the State of Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

On October 30, 1996, Stanley Parker entered into a settlement agreement in this claim for a May 1995 accident. Twenty days later, on November 19, 1996, Mr. Parker died from cancer.

Frances Parker as the Administratrix of the Estate applied for a hearing to request payment of the weekly benefits that accrued after her son's death. After finding that the parties had agreed to enter into an award that provided them the same rights as an award entered in a litigated claim, the Judge held that Mr. Parker's death terminated respondent's obligation to pay benefits for those weeks following November 19, 1996.

Ms. Parker contends the Judge erred by failing to find that the parties entered into a binding settlement agreement that required the State to pay weekly benefits regardless of Mr. Parker's death. Conversely, the State contends Mr. Parker's death abrogated the weekly benefits that accrued after that date.

The only issue before the Board on this appeal is whether Mr. Parker's death terminated the State's responsibility to pay the weekly benefits that accrued after his death.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. On October 30, 1996, Mr. Parker settled his workers compensation claim for a May 1995 accident.
2. Appearing before a Special Administrative Law Judge, the parties settled this claim and agreed that an award would be entered for a 25 percent permanent partial general disability. The parties also agreed that the Award had the same force and effect as an award decided by a judge in a litigated claim.
3. Mr. Parker negotiated his settlement and appeared at the settlement hearing without an attorney.
4. The agreed award provided that 38.98 weeks of permanent partial general disability benefits totaling \$11,787.16 were due and owing as of November 2, 1996, with 59.02 additional weeks of permanent partial disability benefits to be paid at "the normal and customary payroll cycle" at the rate of \$302.39 per week.
5. Nothing was said during the October 30 settlement hearing about whether the future weekly benefits would continue or be abrogated in the event of Mr. Parker's death. At the time of the settlement hearing, Mr. Parker knew that he was terminally ill.
6. The State did not mislead Mr. Parker in any manner.
7. Mr. Parker died from cancer on November 19, 1996, twenty days following the settlement hearing.

CONCLUSIONS OF LAW

1. The Award denying the payment of benefits for those weeks accruing after November 19, 1996, should be affirmed.
2. The parties agreed that the Award would be treated the same as an any award entered by a judge in a litigated claim. The agreement did not include any provision that the weekly permanent partial general disability benefits would survive Mr. Parker's death.

3. The Workers Compensation Act provides that the death of a worker for causes unrelated to the work-related injury terminates the weekly benefits that would otherwise become due or accrue after the date of death.¹ The Act provides:

If an employee has received an injury for which compensation is being paid, and the employee's death is caused by other and independent causes, any payment of compensation already due the employee at the time of death and then unpaid shall be paid to the employee's dependents directly or to the employee's legal representatives if the employee left no dependent, but the liability of the employer for the payments of compensation not yet due at the time of the death of such employee shall cease and be abrogated by the employee's death.

4. Although Mr. Parker may have believed his benefits would continue after his death, the legislature has provided otherwise. Because the agreed award did not provide that the weekly benefits would survive Mr. Parker's death, the benefits that would have accrued after his death are abrogated.

AWARD

WHEREFORE, the Appeals Board affirms the August 28, 1998 Award entered by Administrative Law Judge Bruce E. Moore.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph W. Jeter, Hays, KS
Richard A. Boeckman, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 44-510e(b).